

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3723 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA K DAVE

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioner
MR SK PATEL, AGP for Respondent No. 1, 4
None present for Respondent No.2 & 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/11/1999

ORAL JUDGEMENT

1. The petitioner - a protected teacher, by this petition under Article 226 of the Constitution challenges the action of the respondents in not extending the benefits of pay-scale and other benefits to him from 1968.

2. Short question arises in this case for

consideration of this court is whether the petitioner could have been given the benefits of Government resolution No.BMS/3477/47358/83/G dated 8.3.1984 Annexure-B from the date of issuance of or from the date on which the petitioner improved his qualification.

3. Learned counsel for the petitioner contends that the resolution dated 8.3.1984 has totally been misconstrued, misinterpreted and misunderstood by the respondent No.4. Further the respondent No.4 has committed serious illegality in not granting the benefits to the petitioner as a result of improvement of his qualification from the date of the improvement of the qualification.

4. Learned counsel for the respondents on the other hand contends that these benefits are available to the petitioner from the date of the resolution aforesaid and not from the date on which he improved his qualification.

5. From this resolution I find that, protected teachers of the secondary school approached to this court and this court has accepted their claim that they are entitled for the pay-scale as per their improved qualification from the date from which they got such qualification. After this decision, the Government has passed the resolution aforesaid and paragraph 2 thereof reads as under.:

"After due consideration, the Government has decided that the concerned protected teachers shall be eligible to get their salary in the pay scale of such amended qualification from the date when same is obtained from time to time. All such cases be decided in terms of this decision. Same is hereby resolved accordingly."

From reading of this paragraph of the resolution aforesaid, it is clear that the concerned protected teacher is accepted to be eligible to get his salary in the pay-scale of such amended qualification from the date when that qualification has been acquired. Cases of the protected teachers were directed to be decided in terms of the resolution aforesaid. In view of these facts, whole approach of the respondents in these facts to take this resolution to be prospective is wholly erroneous and it cannot be allowed to be stood.

6. As a result of the aforesaid discussions, this Special Civil Application succeeds and the same is

allowed. The respondents are directed to give the benefits of the improved qualification to the petitioner from the date from which he improved his qualification. Arrears of the fixation of his pay to be arrived at after giving the benefits of improved qualification are to be determined within a period of one month from the date of receipt of the writ of this order and the payment of the determined amount to be made to the petitioner within one month next. The petitioner shall also be entitled for interest at the rate of 12% on this amount from the date of filing of this Special Civil Application i.e. 14.6.1988. It is the case where the petitioner - a protected teacher unnecessarily been harassed and compelled to approach this court. Litigation before this court costs heavily which clearly borne out from the statement of the learned counsel for the petitioner that he charged Rs.2500/- and the amount has been paid to him by the petitioner to provide his professional services in this case to the petitioner. This is not only expense which has been incurred by the petitioner but the petitioner has not furnished any material for other claim. The respondent State of Gujarat is directed to pay Rs.2500/- as costs of this litigation to the petitioner. Rule is made absolute in the terms aforesaid.

(S.K.Keshote,J.)

(pathan)